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No. 372

[redacted]

THE UNITED STATES PRINTING AND LITHOGRAPH COMPANY, PETITIONER,

vs.

GEORGE, COOPER AND COMPANY.

[redacted]

[redacted]

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(33,661)

(33,681)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 372

THE UNITED STATES PRINTING AND LITHOGRAPH COMPANY, PETITIONER,

vs.

GRIGGS, COOPER AND COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 9, 1928

Supreme Court of Ohio

No. 20435.

THE UNITED STATES PRINTING AND LITHOGRAPH COMPANY,

Plaintiff in Error,

vs.

GRIGGS-COOPER AND COMPANY,

Defendant in Error.

PETITION IN ERROR.

[Filed April 6, 1927.]

Plaintiff in error says that defendant in error, by consideration of the Court of Appeals of the first appellate district, Cincinnati, Ohio, on the twenty-eighth day of February, 1927, at the January Term of said court, obtained judgment and final order against the plaintiff in error in a certain proceeding numbered 2913, pending therein, wherein said plaintiff in error herein was defendant, and said defendant in error herein was plaintiff, by which said judgment and final order said Court of Appeals affirmed a certain judgment and final order of the Court of Common Pleas of Hamilton county, Ohio,

theretofore rendered against the plaintiff in error, and granted an injunction against the plaintiff in error. A transcript of the docket and journal entries thereof in full in said court, together with all of the original papers and printings therein, including a bill of exceptions, are hereto attached and filed herewith.

Plaintiff in error says that there is error in said judgment, final order, records and proceedings in this, to wit:

1.

In failing to reverse the judgment and final order of the Court of Common Pleas for Hamilton county, Ohio, and in refusing to dissolve the injunction granted by said Court of Common Pleas.

2.

In holding "that Section 16 of the trademark act of 1905 does project and protect the trademark rights of the owner into all of the states even in advance of trade."

3.

In construing the trademark act of 1905 contrary to the interpretations placed thereon by the United States district and appellate courts.

4.

In placing a construction upon the trademark act of 1905 that is repugnant to the United States Constitution whereby to render said trademark act unconstitutional, providing said construction of said act by said Court of Appeals, be correct.

5.

In holding that defendant in error is entitled to a monopoly in the use of the word "Home," as applied to various food products, in markets not reached by the defendant in error.

6.

In construing Section 16 of the trademark act of 1905 as giving "protection to the owner in interstate commerce throughout the states, regardless of the extension of trade."

7.

In holding that Article 1, Section 8, Subdivision 3, of the United States Constitution gives Congress the right to regulate commerce among the several states to the extent of creating trademark rights and of projecting and protecting such trademark rights into all of the states in advance of trade under such marks.

8.

In construing the trademark act of 1905 so as to deny and deprive the citizens of the state of Ohio of their rights to and in property as guaranteed to them by the United States Constitution, Article X, and the Ohio Constitution, Article 1, Sections 1, 19 and 20.

9.

In giving judgment for the defendant in error when it should have been given for the plaintiff in error.

Wherefore plaintiff in error prays that the finding, judgment and orders of the appellate court be reversed,

that the injunction be dissolved, and that it be restored to all things it has lost by reason thereof.

WALTER F. MURRAY,
FRANK L. ZUGELTER,
Attorneys for Plaintiff in Error.

WAIVER OF SUMMONS.

Cincinnati, Ohio, April 5, 1927.

The issuance and service of summons in error herein is waived and the appearance of the defendant in error is hereby entered.

COBB, HOWARD & BAILEY,
Attorneys for Defendant in Error.

Transcript of Docket and Journal Entries.

1927, April 6. Petition in error, as of right, and waiver of summons and entry of appearance filed.

1927, April 6. Court of Appeals transcript of docket and journal entries, original papers, bill of exceptions and exhibits filed.

1927, April 6. Motion for an order to certify the record, plaintiff's printed briefs on motion, notice and proof of service filed.

1927, April 18. Printed brief of defendant on motion filed, 4/22/27. Proof of service filed.

1927, April 25. Printed "Decisions of Common Pleas Court and Court of Appeals submitted as addenda to brief of defendant," filed, 4/29/27. Proof of service filed.

1927, April 29. Plaintiff's printed reply, briefs on motion and proof of service filed.

1927, April 29. Original papers taken by Toothaker & Rodenfels, 5/12/27, returned.

1927, May 4. Transcript of docket and journal entries of Court of Appeals filed, and taken by Toothaker & Rodenfels.

1927, May 4. Time for filing printed record extended until May 12, 1927. C. T. Marshall, chief justice.

1927, May 11. Motion for an order directing the Court of Appeals of Hamilton county to certify its record.

1927, May 11. Order No. 958 to clerk of courts to certify record.

1927, May 12. Printed record and affidavits filed.

1927, May 14. Court of Appeals certificate filed.

1927, May 16. Plaintiff's printed briefs re-filed on merits (10 copies) May 18, 1927 — Proof of service filed.

1927, May 16. Plaintiff's printed reply briefs (7) filed.

1927, May 16. Cause stands for hearing on original petition in error filed.

1927, May 20. Plaintiff's printed reply briefs (5) re-filed on merits.

1927, May 20. Plaintiff's printed reply briefs (2) re-filed on merits.

1927, May 21. Printer's receipted bills filed.

1927, June 3. Printed brief of plaintiff and proof of service filed.

1927, July 16. Defendant's printed briefs filed 7/19/27. Proof of service filed.

1927, December 29. Additional authorities of defendant in error and proof of service filed.

1928, January 28. Printed reply brief of plaintiff in error.

1928, June 20. Judgment affirmed.

1928, June 27. Mandate issued.

1928, June 27. Original papers and bill of exceptions sent to clerk.

Journal Entries.

May 4, 1927. Upon application of Toothaker & Rodenfels and for good cause shown, it is ordered that the time for filing printed record herein be, and the same hereby is, extended until May 12, 1927. Enter: C. T. Marshall, C. J.

May 11, 1927. Motion for an order directing the Court of Appeals of Hamilton county to certify its record.

It is ordered by the court that this motion be and the same is hereby allowed.

June 20, 1928. This cause came on to be heard upon the transcript of the record of the Court of Appeals of Hamilton county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby affirmed; and it appearing to the court that there was reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiffs in error its costs herein expended, taxed at $..... Ordered, that a special mandate be sent to the Court of Appeals of Hamilton county, to carry this judgment into execution.

[Duly certified.]

OPINION.

1. By virtue of the provisions of Section 16 of the Trademark Act of 1905 (U. S. Comp. St., 9501) the rights of the registrant of a trademark thereunder are not limited to the territory where his trade in the commodity covered by the trademark is established but extend throughout the states regardless of the actual extension of trade.

2. The provisions of Section 16 of that act, (U. S. Comp. St. 9501) are not violative of the Federal Constitution, but authorized by Section 8 of Article 1 thereof.

(No. 20435 — Decided June 20, 1928.)

Error to the Court of Appeals of Hamilton county.

This action was instituted in the Court of Common Pleas of Hamilton county by the Griggs-Cooper Company against the United States Printing and Lithograph Company. The parties will be referred to as they there appeared.

The plaintiff is a corporation with its principal place of business in St. Paul, Minnesota, its business being that of manufacturing groceries wholesale, and selling groceries and other like goods, wares and merchandise wholesale in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, Montana and Washington. In the transaction of its business prior to 1901 as a partnership, and since that date as a corporation, plaintiff adopted and used a trademark, "Home Brand," for various and sundry descriptions of goods, wares and merchandise sold by it, and caused said trademark from time to time to be fixed and applied to various kinds of goods, wares and

merchandise, and to be duly registered in the United States Patent Office. The plaintiff has sold in the market in the various states named said goods, wares and merchandise under the designated name and trademark, the dates of the several registrations for the various and divers articles of goods, wares and merchandise beginning with 1905 and ending with 1920. The essential feature of said trademark at all times was the word "Home," and said goods, wares and merchandise were extensively advertised.

For many years the defendant, the United States Printing and Lithograph Company, had printed, published and sold to its customers in the states of Kansas, Illinois, Indiana, Pennsylvania, Missouri, Ohio, Michigan, Virginia, Maryland and Louisiana certain labels upon which the word "Home" appeared in combination with some other word such as "Harvest Home," "Homestead," "Home Wood," "Home Comfort," "Home Town," "Home Club," "Home Run," and others, for all kinds of commodities usually sold by manufacturing grocers and wholesale grocers, including such goods, wares and merchandise as sold by the plaintiff under its registered trademark "Home Brand," and the labels used in relation thereto; and said labels so printed, published and sold by the defendant are used by those who purchase the same from the defendant as a trademark or mark in the sale of such similar articles of merchandise.

After demanding that defendant cease to print, publish and sell labels which were the same or similar to the plaintiff's said labels, or containing the said trademark

"Home Brand" or the distinguishing feature "Home" or any imitation or simulation thereof, for use in the sale of similar products, with which demand defendant refused to comply, plaintiff brought this suit seeking to enjoin the defendant from printing, publishing or selling labels for any kind of grocery commodities as are being sold by the plaintiff in the label of which the word "Home" appears. An injunction was granted by the Court of Common Pleas as prayed, and upon hearing on appeal the Court of Appeals entered a similar order. The latter court, in addition to the facts previously stated, found that plaintiff and its customers advertised extensively said groceries, goods, wares and merchandise under and by means of its said trademark in the states to which its trade had been extended as above set forth, and that plaintiff was the owner of said trademark "Home Brand" and each of said registrations thereof; that the essential feature of said trademark is and was at all times the word "Home," that the plaintiff was at the time of its petition entitled to the exclusive use of said trademarks and each of them on the goods of the several descriptions set forth, and that the registrations under the trademark act of 1905 extended the rights of the plaintiff in the trademark to cover commerce among the states other than the several states where the trade of plaintiff had been established. The court found that the labels printed and published and sold by the defendant constitute wrongful infringement of plaintiff's right to said trademarks, and based its order of injunction upon said finding.

Upon motion the record was ordered certified to this court.

Mr. Walter F. Murray and Mr. Frank L. Zugelter, for plaintiff in error.

Messrs. Cobb, Howard & Bailey and Messrs. Morphy, Bradford, Cummins, Cummins & Lipschultz, for defendant in error.

Matthias, J.:

The outstanding question presented by the conceded facts is whether by the trademark act of 1905 the plaintiff by the various registrations under its trademark is protected throughout the United States, or, as it has been well stated, whether the effect of that act is to project the right of protection in advance of the actual extension and establishment of trade in said commodities by the plaintiff. In the event the question just stated be answered in the affirmative, then we have the further questions whether the act of 1905, particularly Section 16 (Title 15, Section 96, U. S. Code, Section 9051 U. S. Comp. Stats.) is unconstitutional, and whether the printing and furnishing of such labels to be used in the manner stated make the defendant an infringer against whom a suit in injunction may be maintained.

Upon the lesser proposition, that the labels printed by the defendant, although the whole of the trademark of plaintiff is not used therein, constitute an infringement, many authorities may be cited. The general rule is that the use of the key word in the trademark, being the distinctive word therein, though in company with other words, constitutes an infringement if applied to articles

or commodities of a similar character. We shall cite only a few of the cases directly in point.

In the case of Saxlehner v. Eisner & Mendelson Co., 179 U. S., 19, the Supreme Court lays down the rule upon this subject as follows: "It is not necessary to constitute an infringement that every word of a trademark should be appropriated. It is sufficient that enough be taken to deceive the public in the purchase of a protected article." This rule is applied where, as here, the label in question is attached to the vendible article of merchandise similar in character to that covered by the trademark registration. To the same effect is the case of President Suspender Co. v. MacWilliam, 233 Fed., 433.

In the case of Griggs, Cooper & Co. v. Erie Preserving Co., 131 Fed., 359, the court held, "the words 'Home Comfort' are an infringement of complainant's trademark 'Home Brand' used on canned goods, the word 'Home' being the essential feature of it."

In the case of Griggs, Cooper & Co. v. Federal Coffee Mills Co., 46 App. Cases, D. of C., 317, the court applied the rule above stated, and held that "the words 'Home Pride,' as applied to coffee and teas, are so similar to 'Home' and 'Home Brand,' registered as trademarks and applied to the same goods, as to be likely to cause confusion in trade, and are therefore not registerable as a trademark over an opposition by the registrant of the other marks." The conclusion of the court was based upon its finding that the word "Home" is the distinctive mark of the title lawfully registered by Griggs-Cooper & Co.

In the consideration of the question presented, whether the plaintiff's registration of its trade-mark and the rights secured to it thereby serve to protect it in territory in advance of the actual extension and establishment of its trade there, the construction and application of the trademark act of 1905, particularly Section 16, is required. No case has been cited construing or applying this section, and we have found no precedent to assist in the consideration and determination therof. As heretofore stated it is conceded that the plaintiff's business in the commodities bearing the trademark in question is thus far limited to the states in the northwest which have been enumerated, and that the labels, the printing and use of which is here challenged, were for the use of business concerns located in other states. However, it is not disclosed whether the commodities of the business concerns to whom the defendant furnishes said labels, and the plaintiff's goods, bearing its label, are sold in the same market. It has been urged by counsel for the defendant that by the decision of the Supreme Court of the United States in Hanover Star Milling Co. v. Metcalf, 240 U. S., 403, and United Drug Co. v. Theodore Rectanus Co., 248 U. S., 90, the principle has been established that "the adoption of a trademark does not, at least in the absence of some valid legislation enacted for the purpose, project the right of protection in advance of the extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed advisable to extend the trade." The above statement is quoted from the opinion in the

Rectanus case, supra. It is followed by the further statement, "and the expression, sometimes met with, that a trade-mark right is not limited in its enjoyment by terirtorial bounds, is true only in the sense that wherever the trade goes, attended by the use of the mark, the right of the trader to be protected against the sale by others of their wares in the place of his wares will be sustained."

It is conceded by counsel for the defendant that the court in the case just referred to did not have before it a situation involving the registration of a trade-mark under the act of 1905. It is only claimed that the court there indicated that when a case that does directly involve the question as to whether the registration of a trademark under the act of 1905 projects the common law right in the trademark beyond the territory in which its trade is actually established the court will decide the question in the negative.

Although the opinion in the Hanover case, supra, is informing and instructive, it is not at all decisive of our question, for in the situation there presented none of the parties had registered a trademark under any act of Congress or under the law of any state. The decision therefore turned upon common law principles of general application. Two cases were decided together. One involved questions growing out of a common law trademark, abandonment, nonuser and estoppel, while the other was a case of unfair competition by reason of imitation or simulation.

It is quite obvious that the act of 1905 had no appli-

cation in either of these cases and did not enter into their consideration. Our question, therefore, is whether Section 16 of the trade-mark act of 1905 (Title 15, Section 96, U. S. Code, Section 9501, U. S. Comp. Stats.) has the effect of projecting the right of protection in advance of the establishment of trade, and whether it is valid. Is it "the valid legislation enacted for that purpose" referred to in the Rectanus case? This Section 16 provides as follows:

> "The registration of a trade mark under the provisions of this subdivision of this chapter shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels • • • intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable imitation in commerce among the several states, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof."

This Section 16 was an amendment of Section 7 of the act of 1881, (21 Stats. at L., 503), the material change therein being the insertion of the words, "commerce among the several states," whereas the act previously provided only protection "in foreign commerce or commerce with Indian tribes." If this change does not have the effect of enlarging and extending the rights under a trademark, and provide greater protection than

was theretofore afforded under the common law, no purpose would have been served by the change. This language surely indicates a clear purpose to protect the registrant of a trade-mark further than the state or states wherein his business in the commodities covered by the trademark is actually established. Before the amendment, such limited protection was afforded under the uniform decisions of our courts even where there had been no regulation under the act of Congress. There was of course good reason for not extending the right beyond the zone of established business where there was no registration under the act of Congress, and in the absence of a statute specifically affording that protection, as suggested in the Rectanus case. But does not this statute provide such additional protection as was there suggested might be done? If this statute does not afford such additional protection to the registrant of a trademark the effect of the statute remains exactly the same as before, and the amendment serves no purpose whatever. This was quite a material amendment to the statute, and it should not be nullified, and the terms of the statute formerly existing restored, by judicial construction. The change in the effect and operation of a statute to the extent of the change in the language thereof must be recognized and applied by the court. County Board of Education of Hancock Co. v. Boehm, 102 Ohio St., 292. We have no question here of failure to use, or abandonment of the use of, the trade mark privileges or of the rights conferred; nor have we a situation where there is any claim of any prior right on the part of those

to whom labels were being furnished by the defendant under the registration act.

It is our opinion that the purpose and effect of this statute was to project the trade-mark rights of the registrant and owner thereof into all the states even in advance of the establishment of trade therein, and to afford full protection to such registrant and owner.

The provisions of the act of 1905 so interpreted and applied are not violative of the Federal Constitution, but are authorized by Section 8 of Article I thereof, wherein power is conferred upon Congress "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." There is ample ground for the contention that the purpose of the passage of the act of 1905 was to put trade-marks on the same basis as patents, and to afford them like protection. In a case involving the construction of Section 9 of the act of 1905 it was said by Chief Justice Taft: "It is obvious from that section and the whole of the Trade-mark Act that Congress intended to produce a parallelism in the mode of securing these two kinds of Government monopoly from the Patent Office." (American Steel Foundries v. Robertson, 262 U. S., 209.) Congress has necessarily taken cognizance of the increased interstate character of trade and commerce, and trademarks would be of little value if protection could not be afforded the registrant thereof by act of Congress, and the method provided falls within the power conferred to regulate such commerce. It was said by Chief Justice White in United States v. Ferger, 250 U. S., 199, a case involving the

power of Congress to regulate commerce, that the power to regulate commerce "must include the authority to deal with obstructions to interstate commerce • • • and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

For reasons that are obvious the rule long applied relative to infringers of patents is alike applicable here, and that is that all who actively and intentionally aid and abet the infringing are equally infringers, or, as some of the decisions classify them, contributing infringers. Heaton-Peninsular Button-Fastener Co. v. Eureaka Specialty Co., 77 Fed., 288; Von Mumm v. Wittemann, 85 Fed., 966; Hennessy v. Herrmann, 89 Fed., 669.

Judgment affirmed.

Day, Kinkade and Jones, JJ., concur.

[Certificate attached.]

IN THE COURT OF APPEALS, HAMILTON COUNTY, OHIO.

GRIGGS-COOPER AND COMPANY, A CORPORATION UNDER THE LAWS OF MINNESOTA,

Plaintiff,

vs.

THE UNITED STATES PRINTING AND LITHOGRAPHING COMPANY, A CORPORATION UNDER THE LAWS OF OHIO,

Defendant.

[No. 2913.]

Transcript of Docket and Journal Entries.

1926, April 16. Transcript and original papers filed.

1926, April 20. Motion to suspend operation of injunction filed.

1926, September 14. Three copies of motion for rehearing and brief in support thereof filed.

1926, December 4. Exhibits filed.

1927, March 7. January term. Min. 75. Judgment for plaintiff and decree of injunction against defendant at the cost of defendant.

This cause came on to be heard upon appeal from the Common Pleas Court of Hamilton county, Ohio, was heard upon the pleadings and the stipulation as to facts in issue herein made by the parties hereto and filed herein and was argued by E. H. Morphy of St. Paul, Minnesota,

and Oliver G. Bailey on behalf of the plaintiff and by Walter F. Murray on behalf of the defendant, and was submitted to the court.

Upon consideration whereof the court finds that the plaintiff at the time of filing its petition in said Court of Common Pleas used, and it and its predecessor, Griggs-Cooper and Company, for many years prior thereto had sold various descriptions of groceries, goods, wares and merchandise under the trademark "Home Brand" in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Washington, beyond which states its sales did not extend and applied and had applied said trademark by means of labels containing said words, "Home Brand," and affixed to the packages and containers of said groceries, goods, wares, and merchandise; that from time to time plaintiff and its said precessor caused said trademark as affixed to said divers kinds of said groceries, goods, wares and merchandise to be duly registered under the act of Congress of February 20, 1905, and amendments thereto in the patent office of the United States as provided by the acts of Congress relating thereto, which said registrations were upon the following dates, under and the following numbers and for the following descriptions of groceries, goods, wares and merchandise:

United States trademark "Home Brand," Registration No. 54205, for pickled limes, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54206, for horseradish cream, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54207, for capers, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 56111, for olives, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56112, for jams, marmalade, fruit-butters and jellies, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56113, for table sauces, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56132, for candy, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56133, for vinegar, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56134, for buckwheat and pancake flour, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56135, for plum pudding, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56136, for mincemeat, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56163, for toast, biscuits, crackers, ginger wafers, graham wafers, chocolate wafers, oatmeat wafers, and other wafers, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56164, for rice, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56165, for rolled oats and farina, dated August 28, 1906.

United States trademark "Home Brand," Registra-

tion No. 56166, for vermicelli, spaghetti and macaroni, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56184, for spices and mustard, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56211, for fruit coloring, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56212, for toilet and laundry borax, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56320, for laundry starch, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56333, for syrup, honey and sorghum, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56341, for various named non-alcoholic beverages, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56351, for flavoring extracts, dated September 18, 1906.

United States trademark "Home Brand," Registration No. 56685, for certain named non-alcoholic beverages, dated October 16, 1906.

United States trademark "Home Brand," Registration No. 57592, for tea, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 57593, for birdseed, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 59103, for pickles and chow-chow, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59133, for olive oil, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59194, for glaced fruits and crystallized ginger, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59309, for salad dressing, dated January 8, 1907.

United States trademark "Home Brand," Registration No. 65696, for tapioca and sago, dated October 15, 1907.

United States trademark "Home Brand," Registration No. 75937, for olive salad and corn starch, dated November 30, 1909.

United States trademark "Home Brand," Registration No. 131989, for canned and preserved fruits, canned vegetables, coffee, etc., dated June 8, 1920.

The court finds that the plaintiff and its predecessor advertised extensively said groceries, goods, wares and merchandise under and by means of said trade-mark "Home Brand" in the territory hereinbefore set forth and had and plaintiff has therein a substantial volume of sales of such groceries, goods, wares and merchandise under said trademark; that the plaintiff is and was at the time of filing its petition in said Court of Common Pleas the owner of said trademark "Home Brand" and of each of said registrations thereof; and the essential feature of the said trademark is and was at all times the

arbitrarily selected word "Home" and that the plaintiff is and was at the time of filing the said petition entitled to the exclusive use in the territory hereinbefore set forth of said trademarks and each of them on the goods of the several descriptions set forth and that the aforesaid registrations under the trademark act of 1905 the rights of the plaintiff in the trademark were extended to cover commerce among the states other than the several states where the trade of the plaintiff has been established.

The court finds that for many years prior to the filing of the petition in the Common Pleas Court the defendant, The United States Printing and Lithographing Company, had printed, published and sold to its customers in the states of Kansas, Illinois, Indiana, Pennsylvania, Missouri, Ohio, Michigan, Virginia, Maryland and Louisiana, certain labels upon which the word "Home" appeared in combination with some word such as "Harvest Home," "Homestead," "Home Wood," "Home Comfort," "Home Town," "Home Club," "Home Run" and others and upon and in the sale of groceries, goods, wares and merchandise similar to those described in said registrations of plaintiff's said trademark "Home Brand" and in which plaintiff dealt under said trademark that plaintiff prior to filing its petition in said Court of Common Pleas, notified defendant in writing of plaintiff's rights under and to the said registered trademark "Home Brand" and demanded that defendant cease to print, publish or sell labels, which were the same or similar to plaintiff's said labels or contained the said trademark "Home Brand" or the distinguishing feature "Home"

or any imitation or simulation thereof, but defendant refused to comply with said demand and claimed and asserts the right to and intends to continue to print, publish and sell such labels.

The court finds that said labels so printed, published and sold by the defendant constitute wrongful infringements of the plaintiff's rights to said trademarks and that plaintiff is entitled to an injunction restraining the defendant from printing, publishing or selling any labels, wrappers or other identifying matter, containing the trademark "Home Brand" or the essential feature thereof "Home" or any simulation or imitation thereof, for the sale of groceries, goods, wares and merchandise of any of the several kinds described in plaintiff's said registered trademarks and restraining the defendant from infringing in any manner plaintiff's rights to its said registered trademarks.

It is therefore ordered, adjudged and decreed by the court that the defendant, The United States Printing and Lithographing Company, a corporation under the laws of Ohio, its agents, servants and employees and each and all of them be and they are hereby perpetually enjoined from printing, publishing or selling any labels, wrappers or other identifying matter containing the trademark "Home Brand" or the essential feature thereof "Home" or any simulation or imitation thereof for the sale of groceries, goods, wares and merchandise of any of the several kinds described in plaintiff's said registered trademarks, and from infringing in any manner plaintiff's rights to its said registered trademark.

It is further ordered that a writ of injunction issue enjoining and restraining the defendant, its agents, servants and employees as aforesaid.

It is further ordered that the defendant pay the costs herein taxed as ($.....) dollars.

To all of which the defendant by its counsel excepts.

[Duly certified.]

MOTION FOR REHEARING.

[Filed September 14, 1926.]

The defendant, The United States Printing and Lithograph Company, hereby makes application for rehearing on motion for suspending operation of the injunction granted by the Court of Common Pleas, and for hearing on the merits and the law applicable to this cause.

There is appended hereto a copy of defendant's brief in support of this motion.

Service of copy of this motion and appended brief has been made upon counsel for plaintiff.

WALTER F. MURRAY,
Attorney for Defendant.

IN THE COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO.

GRIGGS-COOPER AND COMPANY, A CORPORATION UNDER THE LAWS OF MINNESOTA,

Plaintiff,

vs.

THE UNITED STATES PRINTING AND LITHOGRAPHING COMPANY, A CORPORATION UNDER THE LAWS OF OHIO,

Defendant.

[No. 181590.]

Transcript of Docket and Journal Entries.

1922, April 7. Petition filed.

1922, April 7. Summons issued.

1922, April 17. Summons returned endorsed: Received, Ferd Bader, sheriff, Hamilton county, Ohio, April 7, 2:42 p. m., 1922.

Cincinnati, Ohio, April 10, 1922.

Served the within named defendant, The United States Printing and Lithographing Company, a corporation under the laws of the state of Ohio, by delivering a true copy of this writ with all the endorsements thereon personally to John Omwake, president thereof. Sheriff fees $1.87. Ferd Bader, sheriff, Hamilton county, Ohio. By John Krieg, deputy.

1922, May 6. Demurrer filed.

1923, January 9. Minute 1812. Entry overruling demurrer to petition.

This cause came on to be heard upon the demurrer of the defendant to the plaintiff's petition herein and was argued by counsel and submitted to the court, and the court finds said demurrer not well taken and overrules the same, to which the defendant excepts.

Defendant is granted twenty days from the date hereof to answer said petition.

1923, January 29. Answer filed.

1925, May 28. Stipulation filed.

1926, March 22. Decree of permanent injunction at defendant's costs. Defendant excepts and gives notice of appeal. Appeal bond fixed at $500.00.

1926, April 7. Bond 142 in Bond Book 25 in $500.00 for appeal given. (See safe in clerk's office.)

This cause came on to be heard upon the pleadings and the stipulation as to facts in issue herein, made by the parties hereto and filed herein, and was argued by E. H. Morphy of St. Paul, Minnesota, and Oliver G. Bailey on behalf of the plaintiff and by Miller Outcalt and Walter F. Murray on behalf of the defendant, and was submitted to the court.

Upon consideration whereof the court finds that the plaintiff at the time of filing its petition herein used, and it and its predecessor, Griggs-Cooper & Company, for many years prior thereto had sold various descriptions of groceries, goods, wares and merchandise, under the trademark "Home Brand" in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota and Washington, be-

yond which states its sales did not extend, and applied, and had applied, said trademark by means of labels containing said words "Home Brand" and affixed to the packages and containers of said groceries, goods, wares and merchandise; that from time to time plaintiff and its said predecessor caused said trademarks as affixed to said divers kinds of said groceries, goods, wares and merchandise, to be duly registered under the act of Congress of February 20, 1905, and amendments thereto in the patent office of the United States as provided by the acts of Congress relating thereto, which said registrations were upon the following dates, under the following numbers and for the following descriptions of groceries, goods, wares and merchandise:

United States trademark "Home Brand," Registration No. 54205, for pickled limes, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54206, for horseradish cream, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54207, for capers, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 56111, for olives, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56112, for jams, marmalade, fruit butters and jellies, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56113, for table sauces, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56132, for candy, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56133, for vinegar, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56134, for buckwheat and pancake flour, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56135, for plum pudding, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56136, for mincemeat, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56163, for toast, biscuits, crackers, ginger wafers, graham wafers, chocolate wafers, oatmeal wafers, and other wafers, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56164, for rice, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56165, for rolled oats, and farina, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56166, for vermicelli, spaghetti and macaroni, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56184, for spices and mustard, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56211, for fruit coloring, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56212, for toilet and laundry borax, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56320, for laundry starch, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56333, for syrup, honey and sorghum, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56341, for various named non-alcoholic beverages, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56351, for flavoring extracts, dated September 18, 1906.

United States trademark "Home Brand," Registration No. 56685, for certain named non-alcoholic beverages, dated October 16, 1906.

United States trademark "Home Brand," Registration No. 57592, for tea, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 57593, for birdseed, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 59103, for pickles and chow-chow, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59133, for olive oil, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59194, for glazed fruits and crystallized ginger, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59309, for salad dressing, dated January 8, 1907.

United States trademark "Home Brand," Registra-

tion No. 56596, for tapioca and sago, dated October 15, 1907.

United States trademark "Home Brand," Registration No. 75937, for olive salad and corn starch, dated November 30, 1909.

United States trademark "Home Brand," Registration No. 131989, for canned and preserved fruits, canned vegetables, coffee, etc., dated June 8, 1920.

The court finds that the plaintiff and its predecessor advertised extensively said groceries, goods, wares and merchandise under and by means of said trademark "Home Brand," in the territory hereinbefore set forth, and had, and plaintiff has, therein a substantial volume of sales of such groceries, goods, wares and merchandise under said trademarks; that the plaintiff is and was at the time of filing its petition herein, the owner of said trade-mark "Home Brand" and of each of said registrations thereof; that the essential feature of the said trademark is, and was, at all said times, the arbitrarily selected word "Home" and that the plaintiff is and was at the time of filing the said petition, entitled to the exclusive use, in the territory hereinbefore set forth, of said trademarks, and each of them, on the goods of the several descriptions set forth, and that by the aforesaid registrations under the trademark act of 1905, the rights of the plaintiff in the trademark were extended to cover commerce among the states, other than the several states where the trade of the plaintiff has been established.

The court finds that prior to the filing of the petition herein, the defendant, The United States Printing and

Lithographing Company, printed, published and sold to its customers in the states of Kansas, Illinois, Indiana, Pennsylvania, Missouri, Ohio, Michigan, Virginia, Maryland and Louisiana, certain labels upon which the word "Home" appeared in combination with some other word such as "Harvest Home," "Homestead," "Home Wood," "Home Comfort," "Home Town," "Home Club," "Home Run" and others, and upon and in the sale of groceries, goods, wares and merchandise similar to those described in said registrations of plaintiff's said trademark "Home Brand" and in which plaintiff dealt under said trademark; that plaintiff prior to filing its petition herein notified defendant in writing of plaintiff's rights under and to the said registered trademark "Home Brand" and demanded that defendant cease to print, publish or sell labels which were the same, or similar to, plaintiff's said labels, or contained the said trademark "Home Brand," or the distinguishing feature "Home," or any imitation or simulation thereof, but defendant refused to comply with said demand and claimed and asserts the right to, and intends to continue to, print, publish and sell such labels.

The court finds that said labels so printed, published and sold by the defendant constitute wrongful infringements of the plaintiff's rights to said trademarks and that plaintiff is entitled to an injunction restraining the defendant from printing, publishing or selling any labels, wrappers or other identifying matter, containing the trademark "Home Brand" or the essential feature thereof, "Home," or any simulation or imitation thereof, for

the sale of groceries, goods, wares and merchandise of any of the several kinds described in plaintiff's said registered trademarks and restraining the defendant from infringing in any manner plaintiff's rights to its said registered trademarks.

It is therefore ordered, adjudged and decreed by the court that the defendant, The United States Printing and Lithographing Company, a corporation under the laws of Ohio, its agents, servants and employees, and each and all of them be and they are hereby perpetually enjoined from printing, publishing or selling any labels, wrappers or other identifying matter, containing the trademark "Home Brand" or the essential feature thereof "Home," or any simulation or imitation thereof, for the sale of groceries, goods, wares and merchandise of any of the several kinds described in plaintiff's said registered trademarks, and from infringing in any manner plaintiff's rights to its said registered trademarks.

It is further ordered that a writ of injunction issue enjoining and restraining the defendant, its agents, servants and employees as aforesaid.

It is further ordered that the defendant pay the costs herein taxed at ..... dollars ($.....).

To all of which the defendant by its counsel excepts and gives notice of appeal and the court fixes the appeal bond at the sum of five hundred dollars ($500.00).

[Duly certified.]

PETITION.

[Filed April 7, 1922.]

The plaintiff above named is now and has been since on or about the first day of January, 1901, a corporation duly organized, created and existing under and by virtue of the laws of the state of Minnesota, having its principle place of business in the city of St. Paul, in said state; the business of said corporation, ever since its incorporation being that of manufacturing wholesale grocers and the selling of groceries and other like goods, wares and merchandise at wholesale in the state of Minnesota and various other states of the United States and especially within the states of Minnesota, Wisconsin, Michigan, North and South Dakota, Montana and Washington.

The defendant is a corporation duly organized, created and existing under and by virtue of the laws of the state of Ohio, having its principal place of business in the city of Norwood, in said state; the business of said corporation being amongst other things that of printing, lithographing and selling labels to various persons, firms and corporations for use in their business.

For many years prior to the year 1893, Griggs, Cooper & Company was a partnership composed of Chauncey W. Griggs, C. Milton Griggs and Jason W. Cooper, doing business as manufacturing wholesale grocers and the selling of groceries and other like goods, wares and merchandise, at wholesale in the state of Minnesota, and various other state of the United States. The said firm continued doing said business from prior to said date of 1893 and up to the said first of January, 1901, when said firm became incorporated as aforesaid.

Upon the incorporation of the plaintiff as aforesaid, the said firm of Griggs, Cooper and Company, for a valuable consideration duly sold, assigned, transferred and set over to the plaintiff corporation, all of the business and the entire assets of said firm including all of the right, title and interest of, in and to certain trademarks hereinafter more particularly referred to, then owned and controlled by said firm, together with the good will in the business of said co-partnership identified thereby, and the trademark "Home Brand" hereinafter referred to, as well as said other assets, became legally and absolutely vested in the said plaintiff corporation, and have so remained vested in the said plaintiff corporation from said date up to the present time.

From time to time in the transaction of said business the said firm of Griggs, Cooper and Company and its successor, the plaintiff herein, adopted and used the said trademark "Home Brand" for various descriptions of grocers' goods, wares and merchandise sold by them and applied said trademark to such goods, wares and merchandise sold by them on the market in said states of Minnesota, Wisconsin, Michigan, North and South Dakota, Montana, Washington and other states of the United States, and from time to time caused the said trademark as affixed to said divers kinds of such grocers' goods, wares and merchandise to be duly registered in the United States patent office as provided by law, said registration being upon the dates hereinafter set forth and said goods being of the several descriptions recited in said registrations and the application of said mark

to such goods being by the means of labels bearing said trademark "Home Brand," samples of which labels are of record in the respective files of said registrations in the United States patent office.

Plaintiff and its said predecessor, the Griggs, Cooper and Company, at the time of the said registrations and continuously from said time until the present time sold under said name, and using said trademark, said respective goods, wares and merchandise in its said market, to wit, in the states of Minnesota, Wisconsin, Michigan, North and South Dakota, Washington, Montana and other states of the Union. Said registrations are as follows, to wit:

United States trademark "Home Brand," Registration No. 22829, for preserved fruits and vegetables, dated April 18, 1893.

United States trademark "Home Brand," Registration No. 31881, for cheese, spices, extracts, maple syrup, sorghum, molasses, salt, teas, soda, starch, bluing, wet mustard, farinaceous foods, pickles, olive oil, salad dressings, jellies, sauces, macaroni, vermicelli, birdseed, dried fruits and vinegar, dated April 16, 1898.

United States trademark "Home Brand," Registration No. 54205, for pickled limes, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54206, for horseradish cream, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 54207, for capers, dated June 19, 1906.

United States trademark "Home Brand," Registration No. 56111, for olives, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56112, for jams, marmalade, fruit-butters and jellies, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56113, for table sauces, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56132, for candy, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56133, for vinegar, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56134, for buckwheat and pancake flour, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56135, for plum pudding, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56136, for mincemeat, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56163, for toast, biscuits, crackers, ginger wafers, graham wafers, chocolate wafers, oatmeal wafers, and other wafers, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56164, for rice, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56165, for rolled oats, and farina, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56166, for vermicelli, spaghetti and macaroni, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56184, for spices and mustard, dated August 28, 1906.

United States trademark "Home Brand," Registration No. 56211, for fruit coloring, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56212, for toilet and laundry borax, dated September 4, 1906.

United States trademark "Home Brand," Registration No. 56320, for laundry starch, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56333, for syrup, honey and sorghum, dated September 11, 1906.

United States trademark "Home Brand," Registration No. 56341, for various named non-alcoholic beverages, dated September 11, 1908.

United States trademark "Home Brand," Registration No. 56351, for flavoring extracts, dated September 18, 1906.

United States trademark "Home Brand," Registration No. 56685, for certain named non-alcoholic beverages, dated October 16, 1906.

United States trademark "Home Brand," Registration No. 57592, for tea, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 57593, for birdseed, dated November 13, 1906.

United States trademark "Home Brand," Registration No. 59103, for pickles and chow-chow, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59133, for olive oil, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59194, for glazed fruits and crystallized ginger, dated January 1, 1907.

United States trademark "Home Brand," Registration No. 59309, for salad dressing, dated January 8, 1907.

United States trademark "Home Brand," Registration No. 65696, for tapioca and sago, dated October 15, 1907.

United States trademark "Home Brand," Registration No. 75937, for olive salad and corn starch, dated November 30, 1909.

United States trademark "Home Brand," Registration No. 131929, for canned and preserved fruits, canned vegetables, coffee, etc., dated June 8, 1920.

The essential feature of the said trademark is and was at all said times the arbitrarily selected word "Home" and said word "Home" in association with the word "Brand" was so used by the said plaintiff, and its said predecessor, Griggs, Cooper and Company, upon the labels on said products sold by them in substantially the manner shown in the samples of said labels which are hereto attached and marked "Exhibits One, Two, Three and Four" respectively and made a part hereof.

The plaintiff and its said predecessor have sold said respective goods, wares and merchandise under the said trademark "Home Brand" in its said market ever since the said dates of the said respective registrations and plaintiff is still selling said goods in such manner in said states and plaintiff and its predecessor have expended large sums of money in acquiring and maintaining its

said trademark "Home Brand," and in advertising the goods sold by it under and in connection with said trademark and by reason of the said sales and said advertising and expenses so incurred by the plaintiff and its predecessor the said trademark "Home Brand" has become widely known as the property of the plaintiff and widely and favorably known to the public as identifying the products of the plaintiff and distinguishing them from those of all other dealers in similar lines of said goods, wares and merchandise and plaintiff has built up a large and lucrative business in said goods, wares and merchandise, and the public is in the habit of identifying such goods, wares and merchandise with the word "Home" as a trademark, whether with or without other distinguishing matter, as originating with the plaintiff corporation, and confusion in the mind of the public and damage to the plaintiff corporation will be caused by printing, publishing and selling any labels in which the word "Home" appears when applied to any goods, wares and merchandise of the same kind and class which are being sold by the plaintiff corporation under its said trademark of "Home Brand" as aforesaid.

The defendant is now and has been for some time past printing, publishing and selling numerous labels in which the word "Home" appears for all kinds of commodities usually sold by manufacturing grocers and wholesale grocers including the above described goods, wares and merchandise sold by the plaintiff corporation as aforesaid under the said registered trademark "Home Brand" and the labels in relation thereto. The labels containing

or bearing the word "Home," so printed, published and sold by the defendant as aforesaid are used by the purchasers from said defendant as a trademark or mark in the sale by them in the same territory in which plaintiff and its said predecessor established their market and have long sold their said products, and said purchasers thereby sell goods, wares and merchandise in said territory of the same kinds respectively as those dealt in by plaintiff under said trademark and the labels so printed, published and sold by the defendant as aforesaid are as defendant well knew sufficiently similar to the plaintiff's said trademark "Home Brand" as to lead to confusion and mistake in the minds of the public and purchasers and said acts of the defendants are knowingly done with the effect of enabling its purchasers by the use of such labels to substitute and palm off their goods, wares and merchandise of the plaintiff to the irreparable damage of the plaintiff for which it has no adequate remedy at law.

Immediately on the plaintiff corporation becoming aware of the fact that the defendant was printing, publishing and selling said labels as aforesaid plaintiff on or about November 17, 1921, and December 21, 1921, notified defendant in writing of its rights under and to said trademark and demanded of the defendant that it desist from said infringements thereof but defendant has refused to comply with the said demand and insists upon the right to, and continues to print, publish and sell said labels as aforesaid with full knowledge of the rights of said plaintiff as aforesaid and of the fact that by such printing, publishing and selling said labels it

enables and abets its purchasers in infringing upon plaintiff's rights in the said trademark and unless restrained by an order of this Honorable Court the defendant will continue to print, publish and sell said labels as aforesaid and by reason thereof the business of the plaintiff and its reputation and patronage and good will in and about its business will be seriously and irreparably injured; for which the plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays that the defendant, its agents, servants and employees, and each and all of them be enjoined and restrained temporarily until the determination of this action and permanently thereafter from printing, publishing or selling labels for any kind of grocery commodities such as are being sold by the plaintiff as aforesaid in which label the word "Home" appears, for its costs and all other proper relief.

COBB, HOWARD & BAILEY,
MORPHY, BRADFORD & CUMMINS,
Attorneys for Plaintiff.

[Duly verified.]

ANSWER.

[Filed January 29, 1923.]

The defendant above named, admits that plaintiff is a corporation, is domiciled and has a business such as alleged in the first paragraph of the petition.

Defendant admits that it is a corporation and has a business as alleged in the second paragraph of the petition.

Defendant admits the truth of the allegation concerning the business of plaintiff's predecessor and that any

rights to the trademark "Home" which were owned by plaintiff's predecessor, were assigned to plaintiff.

Defendant admits that plaintiff and its predecessor used the words "Home Brand" upon various descriptions of grocers' goods, in the states specified in the fourth paragraph of the petition and that plaintiff secured from the United States patent office the certificates of registration set forth upon pages 3, 4 and 5 of the petition.

Defendant denies that the essential feature of the trademarks in said certificates was the word "Home" and that the word "Home", was arbitrarily selected.

Defendant denies that the word "Home" has become widely known as the trademark property of the plaintiff, and that confusion in the mind of the public and damage to the plaintiff will be caused by defendant's printing, publishing and selling labels on which the word "Home" appears, for application to grocers' goods.

Defendant admits that it has in the past, printed and sold labels on which the word "Home" appeared, for various commodities sold by grocers, but defendant denies that it has printed, published and sold labels bearing the word "Home", with a knowledge that their use by defendant's customers would lead to confusion and mistake in the minds of the public, and that the printing, publishing and selling of said labels has enabled its customers to substitute and palm off their goods as the goods of the plaintiff, or to the damage of the plaintiff.

Defendant admits that plaintiff notified defendant of its alleged rights and demanded that defendant dis-

continue printing, publishing and selling said labels, but alleges plaintiff did not afford defendant any evidence that any of the lebals it was printing were being used by its customers illegally.

Defendant alleges that at great expense to itself, it has compiled a list of trademarks of all kinds of goods and that are registered and in use; that it is its practice before filling an order for labels from a customer, to examine this list and to refuse to print labels that seem to conflict plainly with the rights of merchants other than said customer, but it is impractical for defendant to institute searches to determine conflicting rights, before filling its orders for labels.

Defendant alleges, upon information and belief that there are large numbers of persons, in various states of the United States, that have a right to use labels, bearing the word "Home", upon their canned goods and that defendant has a right to print the labels for the persons, aforesaid.

Defendant alleges that the United States patent office has issued a large number of certificates of registration of trademarks for foods and comprising the word "Home", to various registrants, that are domiciled in various states of the United States, and that defendant has a right to print labels for canned goods and containing the word "Home", for the use of these registrants.

Wherefore, defendant prays that the petition be dismissed, for its costs and other proper relief.

The United States Printing & Lithograph Co.,
By MILLER OUTCALT and
WALTER F. MURRAY,
Its Attorneys.

[Duly verified.]

STIPULATION.

[Filed May 28, 1925.]

Griggs, Cooper and Company, plaintiff herein, and The United States Printing & Lithographing Company, defendant herein, by their respective counsel, hereby agree as to the following facts in issue in the above entitled case and stipulate that this agreement may be used on the trial of said case in lieu of evidence as to such facts, to wit:—

(A) That the defendant, The United States Printing & Lithographing Company, had, prior to the filing of the petition in this action, printed, published, and sold the labels, true copies of which are hereto attached, numbered consecutively as exhibits from one to twenty-three, made a part hereof, and that the names of the parties to whom such labels were sold, the dates of sale and the place of business of such purchasers, are as follows:—

Name and Address	Trade-Mark	Goods
Jett & Wood Grocer Co., Wichita, Kans.	Harvest Home	Oysters
P. Hohenadel Jr. Canneries Co., Gray Lake, Ills.	Nu Home	Peas
Hohenadel-Stocking Packing Co., Rochelle, Ills.	Newhome	Peas, Sweetcorn
Tuhey Canning Co., Muncie, Ind.	Homestead	Peas
The Jett & Wood Merc. Co., Wichita and Hutchinson, Kans.	Harvest Home	Cherries
Franklin MacVeagh & Co., Chicago, Ills.	Homewood	Grapes
The Rath Mfg. Co., Philadelphia, Pa.	Homestead	Furniture Polish
Donnell Mfg. Co., St. Louis, Mo.	Home Comfort	Laundry Bluing
J. T. Scott & Co., River Forest, Ills.	Home Club	Relish
The Albert F. Remy Co., Mansfield, Ohio.	Home Guard	Green Stringless Beans
Michigan State Cannery, Jackson, Michigan.	Home Grown	Peas
Ed. Fuhr, Republic, Mo.	Home Pack	Tomatoes

Edward M. McCormick, Reeds Spring, Mo.	Homestead	Tomatoes
Old Homestead Canning Co., Fork Union, Va.	Old Homestead	Tomatoes
F. I. Mease, Reeds Spring, Mo.	Homestead	Tomatoes
Mullison-Economy Stores, Wilkes Barre, Pa.	Home Brand	Mince Meat
F. G. Davis Co., Lewiston, Maine,	Home Town	Mince Meat
Zschunke Bros., Baltimore, Md.	Home Pride	Cake
Federal Cigarette and Tobacco Co., Montreal, Can.	Home	Cigarettes
Florodora Tag Co., New Orleans, La.	Home Run	Tobacco

(B) That the labels, bound in book form and numbered consecutively as exhibits 1 to 85 inclusive, are true and correct copies of the labels used by the plaintiff herein in the sale of its goods and registered by it in the United States patent office as alleged in plaintiff's petition herein, and that under such labels subsequent to the respective dates of such registration in the states of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, Montana and Washington.

The plaintiff and its predecessors have advertised said goods by the labels set forth in the stipulation herein extensively in the territory herein set forth, and are still selling goods under said labels, and have therein a large and substantial volume of sales of said goods under said labels.

(C) That at the time of the commencement of this action the territory in which the plaintiff sold and had been selling its commodities as set forth in the petition herein under the registered trademark "Home Brand" was and is in the following states, to wit: Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, Montana and Washington, and did not extend beyond said territory, but such stipulation as to plaintiff's territory is without prejudice to the claim of the plaintiff that in law it has the right to be protected in the use of such registered trademarks in all of the states of the United States and particularly in any additional territory in which it may hereafter sell products under such trademarks, and that its customers are retail grocers, located in the aforesaid states.

(D) That the following are brand names containing the word "Home," the names and addresses of the merchants who have used them, the class of goods upon which they have been used, and the dates and numbers of registrations thereof in the United States patent office, viz.:

Name and Address.	Trade-Mark.	Goods.	U. S. Registration Date and No.
Ogden Baking Company, Ogden, Utah	Home of Delight	Bread	July 19, 1921, No. 144,908
Wm. H. Bruning, Evansville, Ind.	Home Drip	Coffee	Dec. 14, 1920, No. 138,170
F. A. Bower, Boston, Mass.	Home Favorite	Coffee	July 3, 1906, No. 12,981
Washburn Crosby Co., Minneapolis, Minn.	A Home Favorite	Flour	Dec. 27, 1904, No. 1166
Ward Baking Co., New York, N. Y.	Homelike	Bread	May 4, 1915, No. 104,163
Waxtwell Paper Co., Grand Rapids, Mich.	Home Made	Bread	Feb. 7, 1922, No. 24,023
S. B. Stone, New Haven, Conn.	Home Made "S"	Jellies	April 16, 1907, No. 62,080
W. W. Devore, Cincinnati, Ohio	Home Maid	Coffee	May 25, 1920, No. 131,735
Northwestern Elevator & Mill Co., Toledo and Loudenville, Ohio	Home Plate	Wheat Flour	May 3, 1910, No. 78,199
Julius Rumpel, Weston, Mo.	Home Pride	Flour	Sept. 14, 1920, No. 22,136

Name and Address.	Trade-Mark.	Goods.	U. S. Registration Date and No.
Reid, Murdock & Fisher, Chicago, Ills.	Home Rule	Wheat Flour	Dec. 14, 1886, No. 13,879
The Acme Mills, Hopkinsville, Ky.	Home Run	Self Rising Wheat Flour	June 8, 1920, No. 131,949
Fisher Flouring Mills Co., Seattle, Wash.	Home Run	Wheat Flour	Aug. 16, 1921, No. 145,665
Wm. Wrigley, Jr., Co., Chicago, Ills.	Home Run	Chewing Gum	Sept. 29, 1914, No. 100,067
Steinwender Stroffregen Coffee Co., St. Louis, Mo.	Homeseeker	Roasted Coffee	June 15, 1915, No. 104,810
Great West Mill & Elevator Co., Amarillo, Texas	Homeseeker	Wheat Flour	Nov. 8, 1921, No. 148,421
Ward Baking Co., New York, N. Y.	Homespun	Bread	April 19, 1921, No. 141,460
C. A. Hammond & Co., Bazile Mills, Nebr.	Home Stake	Flour	Jan. 11, 1887 No. 13,970
Homestead Growers Assn., Homestead, Fla.	Homestead	Fresh Tomatoes	Jan. 3, 1922, No. 150,410
Michael & Sons, Oakington, Md.	Homestead	Canned Corn	May 2, 1893, No. 22913
Jones Brewing Co.,	Homestead	Ale	Feb. 18, 1902,

London, England			
Fussell Ice Cream Co., New York, N. Y.	Home Treat	Ice Cream and Water Ices	No. 37,816 Dec. 14, 1915,
C. D. Kenny Co., Baltimore, Md.	Home Wood	Coffee	No. 107,608 Oct. 26, 1915,
C. D. Kenny Co., Baltimore, Md.	Home Wood	Coffee	No. 106,624 April 13, 1915,
Home Yeast Cakes, Chicago, Ills.	Home Yeast Cakes	Yeast	No. 18,372 Jan. 11, 1887,
Gerhard Lang, Buffalo, N. Y.	Home of Pure Foods	Fresh Meats consisting of Beef, Lamb, Veal and Pork; Smoked Meats consisting of Ham, Bacon, Tongue, and Dried Beef; Salted Meats consisting of Corned Beef, Salted Tongue and Lard	No. 5081 June 28, 1921, No. 144,325
Nutricia Dairy Farm Products Co., Thiensville, Wis.	Farm to Home	Canned Peas	Jan. 25, 1916, No. 108,259

Name and Address.	Trade-Mark.	Goods.	U. S. Registration Date and No.
Memphis Bread Co., Memphis, Tenn.	Happy Home	Bread	Sept. 6, 1921, No. 23,374
Wulfing Gro. Co., St. Louis, Mo.	Happy Home	Chemicals, Cream of Tartar, Castor Oil, Alum, Ammonia, Camphor, Insect Powder, Moth Balls, Salpeter, Epsom Salts, Sulfur	April 21, 1914, No. 96,560
Memphis Bread Co., Memphis, Tenn.	Happy Home	Bread and Cake	July 12, 1921, No. 144,607
St. Elmo Milling Co., St. Elmo, Ills.	Happy Home	Wheat Flour	Nov. 9, 1920, No. 136,949
Matson Coffee Co., Salt Lake City, Utah	Mountain Home	Coffee	May 4, 1915, No. 18,428
Washburn Crosby Co., Minneapolis, Minn.	Old Home	Wheat Flour	Aug. 10, 1920, No. 133,943

C. C. Boney, Minneapolis, Minn.	Old Home and figure of woman standing before house blowing a horn	Wheat Flour	Nov. 18, 1902, No. 39,318
Vogel Bros. & Co., St. Louis, Mo.	Our Home Comfort	Coffee	June 13, 1905, No. 12,201
Geo. Blome & Son Co., Baltimore, Md.	Old Homestead and figure of house	Candy Cough Drops	July 21, 1914, No. 98471
Paducah Vinegar Wks., Paducah, Ky.	Old Homestead Cider and figure of log house	Cider	Oct. 15, 1907, No. 65,683
Bennett, Sloan & Co., New York, N. Y.	The Old Homestead	Canned Meats, Fish, Fruits, Spices, Condiments and Veg. except Corn	March 6, 1894, No. 24,301
S. J. Valk & Bro., New York, N. Y.	Old Homestead and figure of log cabin	Syrup, comp. of Maple Sugar, Syrup and Cane Sugar, Syrup	Jan. 17, 1911, No. 80,688
Price & Lucas Cider & Vinegar Co., Louisville, Ky.	Old Homestead	Vinegar	June 11, 1907, No. 63,288
Hecker Jones Milling Co.,	Old Homestead	Flour	June 4, 1895,

Name and Address.	Trade-Mark.	Goods.	U. S. Registration Date and No.
New York, N. Y.			No. 26,648
G. J. Blome, Baltimore, Md.	The Old Homestead	Cough Lozenges	Dec. 4, 1894, No. 25,579
W. J. Meikelham, Cohoes, N. Y.	Old Homestead	Bread, Biscuits, Cakes and Crackers	Oct. 11, 1892, No. 21,861
Jos. Breck & Sons, Boston, Mass.	Old Homestead	Popcorn	Oct. 17, 1899, No. 7176
C. E. Hires Co., Philadelphia, Pa.	Old Homestead	Condensed Milk	Aug. 1, 1899, No. 7074
T. A. Sheffield & Co., New York, N. Y.	Sheffield's Old Homestead Java and Mocha Coffee	Coffee	Oct. 18, 1904, No. 11,487
E. M. Clough, Chicago, Ills.	Original Old Homestead	Pudding Sauce	Sept. 19, 1899, No. 7136
E. Cripp & Son, Louisville, Ky.	Old Kentucky Home Flour	Wheat Flour	June 30, 1891, No. 19,795
Fred Johnson, De Ridder, La.	Southern Home	Bread and Cake	May 14, 1918, No. 121,626
Larkin & Co., Buffalo, N. Y.	Sweet Home	Washing Compound	Sept. 9, 1870, No. 7666

Plaut Milling Co., St. Louis, Mo.	Sweet Home	Wheat Flour	Jan. 10, 1899, No. 32,361
New Orleans Coffee Co., New Orleans, La.	Sweet Home and figure of baby lying in scale	Molasses, Syrup and Sorghum	Aug. 2, 1904, No. 43,112
Steinwender Stroffregen Coffee Co., St. Louis, Mo.	Home Circle	Roasted Coffee	May 23, 1916, No. 110,438
Wm. C. Roberson, New York, N. Y.	Home Comfort	Wheat Flour	March 12, 1912, No. 85,767
J. Stiner, New York, N. Y.	Home Comfort	Baking Powder	April 30, 1878, No. 5966
W. H. Roberson, New York, N. Y.	Home Comfort	Flour	Nov. 1, 1891, No. 8805
A. F. Remy Co., Mansfield, Ohio	Home Guard	Canned Fruits, Fish, Oysters, Catsup and Soup	April 4, 1893, No. 22,742
A. F. Remy Co., Mansfield, Ohio	Home Guard	Canned Fruits, Fish, Vegetables, Meats, Oysters, Catsup and Soup	May 9, 1893, No. 23,015
Ward Baking Co., New York, N. Y.	Homelike	Cake	Nov. 9, 1920, No. 136,979

Name and Address.	Trade-Mark.	Goods.	U. S. Registration Date and No.
Homelike Canning & Packing Co., San Francisco, Calif.	Homelike	Canned Fish	March 16, 1915, No. 103,000
W. R. Grace & Co., New York, N. Y., and San Francisco, Calif.	Homelike	Canned Fruits	Aug. 10, 1920, No. 133,981
Garden City Canning Co., Philadelphia, Pa.	Homelike Dinners	Lamb Stew	Feb. 1, 1921, No. 22,467
Geo. Haas & Sons, San Francisco, Calif.	Home Made Specials	Foods and ingredients of Food, Candies	May 17, 1921, No. 142,871
Home Maid Products Co., New York, N. Y.	Home Maid	Chili Sauce and Marmalade	June 15, 1915, No. 104,727
G. Rousis, San Francisco, Calif.	Home Run	Pop Corn Crisps	March 7, 1922, No. 152,974
Seacoast Canning Co., Eastport, Me.	Home Run and figure of ball players	Sardines	Aug. 20, 1912, No. 88,122
Thos. P. Deitrick, Richmond, Va.	Homespun	Canned Fruits and Vegetables, Spices, Lard, Cornmeal, Oat	July 7, 1914, No. 98,258

		Flakes, Pickles, Olives, Catsup, Vinegar, Syrup, Coffee, Herring, Macaroni, Flour, Tea	
Schwabacher Bros. & Co., Seattle, Wash.	Happy Home	Canned Fish	April 17, 1906, No. 61,389
Hull & Dillon Pkg. Co., Pittsburgh, Kans.	Old Homestead	Ham, Bacon, Lard	July 16, 1912, No. 87,452
W. Roes, Baltimore, Md.	Sweet Home	Bread and Cakes	Nov. 7, 1899, No. 33,693
New Orleans Coffee Co., New Orleans, La.	Sweet Home	Molasses, Syrup and Sorghum	Nov. 7, 1905, No. 47,529
F. G. C. Schnor, Sioux City, Iowa	Home Made	Sausage	July 31, 1906, No. 1742
D. B. Austin, Grand Rapids, Mich.	Old Home	Bread	April 17, 1900, No. 7485
E. M. Clough, Chicago, Ills.	Old Homestead	Plum Pudding	Oct. 18, 1898, No. 6700
Happy Home Breakfast Food Co., Niagara Falls, N. Y.	Happy Home Breakfast Food	Breakfast Food	Oct. 3, 1916, No. 19636

Plaintiff does not concede that the matters set forth in Article D have any relevancy or competency in this cause.

COBB, HOWARD & BAILEY,
Counsel for Plaintiff.
WALTER F. MURRAY,
Counsel for Defendant.

Cincinati, Ohio,
March 11, 1924.

SUPREME COURT.
STATE OF OHIO.

I, Seba H. Miller, clerk of the Supreme Court of the state of Ohio, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of The United States Printing and Lithograph Company v. Griggs-Cooper and Company, No. 20435, and of the whole thereof, as the same remains upon the files and records of said Supreme Court of the state of Ohio.

In testimony whereof, I have subscribed my name and affixed the seal of said court at the city of Columbus, Ohio, this twenty-seventh day of July, 1928.

[Seal.] Seba H. Miller,
Clerk of the Supreme Court of the State of Ohio.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.